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IN THE
COURT OF APPEALS OF INDIANA

RONALD R. KLEMMECK,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 46A03-0701-PC-9
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Kathleen B. Lang, Judge
Cause No. 46D01-0309-FC-0096

May 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Ronald R. Klemmeck appeals from the trial court's denial of his motion to correct erroneous sentence. In particular, Klemmeck argues that the trial court erred by concluding that it could not consider his challenge because he could have raised the argument in his direct appeal but did not do so. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 5, 2003, the State charged Klemmeck with two counts of class C felony operating a vehicle while suspended for life, class D felony operating a vehicle while intoxicated, and being a habitual substance offender. On March 18, 2004, pursuant to a written plea agreement, Klemmeck pleaded guilty to two counts of operating while suspended for life. On April 8, 2004, the trial court sentenced Klemmeck to eight years for one count and seven years for the other, with the sentences to be served consecutively. Klemmeck filed a direct appeal, arguing that the trial court had violated the terms of the plea agreement, that the sentence was excessive, and that he received the ineffective assistance of trial counsel. We affirmed his convictions and sentence in an unpublished memorandum decision. Klemmeck v. State, No. 46A03-0506-CR-429 (Ind. Ct. App. Oct. 30, 2006).

On November 15, 2006, Klemmeck filed a motion to correct erroneous sentence, arguing that the trial court impermissibly imposed consecutive sentences following a finding that Klemmeck was a habitual substance offender. On November 22, 2006, the trial court denied Klemmeck's motion. Klemmeck now appeals.

DISCUSSION AND DECISION

Initially, we observe that Klemmeck has waived this argument. In a slightly different context, it is well settled that claims that could have been brought on direct appeal but were not may not then be raised in a petition for post-conviction relief. Taylor v. State, 780 N.E.2d 430, 435 (Ind. Ct. App. 2002). Although we were unable to find a case directly on point with the matter at issue herein, we find that a post-direct-appeal motion to correct erroneous sentence is sufficiently analogous to a petition for post-conviction relief to apply the same rule. Indeed, it would be absurd for a defendant to be foreclosed from raising an issue in a petition for post-conviction relief but able to raise the very same issue in a motion to correct erroneous sentence. Klemmeck could have raised this alleged sentencing error on direct appeal but did not. Consequently, he was not entitled to raise the argument in a motion to correct erroneous sentence and the trial court properly denied the motion.

Waiver notwithstanding, we observe briefly that Klemmeck finds fault with the sentence imposed by the trial court based on an assumption that a habitual offender enhancement was included in the trial court's calculus. That assumption is untrue, however, inasmuch as the record plainly shows that Klemmeck pleaded guilty to, and was sentenced on, two counts of operating while suspended for life. Appellant's App. p. 2. Although the State originally charged Klemmeck with being a habitual substance offender, it dismissed that charge in return for Klemmeck's guilty plea. Id. at 34-36. Consequently, there is simply no evidence that any part of Klemmeck's sentences are based on a habitual offender enhancement. The sentences imposed by the trial court are within the range prescribed for a

class C felony and comply with the terms of the plea agreement. Consequently, the trial court properly ordered Klemmeck's sentences to be served consecutively.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.